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8 WILLIAM OUIMETTE,  
9 Plaintiff,  
10 v.  
11 COUNTY OF LOS ANGELES and DOES  
12 1-10,  
13 Defendants.  
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16 Case No. 2:12-cv-6268-ODW(MRWx)  
17 **ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS [27] AND  
DENYING DEFENDANT'S  
MOTIONS TO STRIKE [28]**

## 18 I. INTRODUCTION

19 Defendant County of Los Angeles moves to dismiss Plaintiff William  
20 Ouimette's First Amended Complaint and to strike portions of Ouimette's Petition for  
21 Writ of Alternative Mandate, which is no longer an operative pleading in this action.  
22 (ECF Nos. 27, 28.) For the reasons discussed below, the Court **DENIES** the County's  
23 motions.<sup>1</sup>

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<sup>1</sup> Having carefully considered the papers filed in support of and in opposition to the County's  
27 motions, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P.  
28 78; L. R. 7-15.

## 1 II. FACTUAL BACKGROUND

2 Plaintiff William Ouimette has been a member of the United States Marine  
 3 Core Reserve Component since 1987. (FAC ¶ 10.) In 1998, he began employment  
 4 with the County of Los Angeles as an Electronic Communications Technician. (FAC  
 5 ¶ 11.) After four years of working for the County, Ouimette was promoted to Digital  
 6 Systems Technician in 2002. (FAC ¶ 12.) Ouimette then took leave for active  
 7 military service from January 2006 through September 2007. (FAC ¶ 14.)

8 Upon his return from service, Ouimette applied for a promotion to Senior  
 9 Digital Systems Technician. (FAC ¶ 15.) To be considered for promotional  
 10 opportunities, County employees are required to take a civil-service promotional  
 11 examination, which constitutes the County's process of testing, evaluating, and  
 12 investigating the fitness and qualifications of applicants. (FAC ¶ 17.) The County's  
 13 Civil Service Rules also require County employers to allow service-member  
 14 employees returning to County service to take these promotional examinations late if  
 15 the exam was offered while the employee was on leave. (FAC ¶ 19.) Ouimette  
 16 alleges that despite these rules, the County denied him the promotion because the  
 17 promotional exam was offered while he was on military leave. (FAC ¶ 20.)

18 Ouimette once again departed for military leave on November 2007 and  
 19 remained on leave until July 2011. (FAC ¶ 21.) Four months before returning,  
 20 Ouimette notified the County of his return and requested reemployment and any  
 21 promotional examinations he may have missed while absent. (FAC ¶¶ 21–23.) When  
 22 he returned, he applied for two promotional examinations: one for an Information  
 23 Technology Specialist position, and the other for Telecom Branch Manager. (FAC  
 24 ¶ 24.) Ouimette was again denied the opportunity to take these examinations, which  
 25 (like the first exam in 2007) were originally offered while he was on active military  
 26 duty. (FAC ¶ 25.)

27 After being denied the opportunity to take these exams, Ouimette filed a  
 28 grievance with the Department of Labor for proper reinstatement. (FAC ¶ 26.)

1 Following the denial of Ouimette's DOL grievance, an unknown Internal Services  
 2 employee filed a complaint on Ouimette's behalf with the County Equity Oversight  
 3 panel, and Ouimette made multiple efforts to resolve the dispute by appearing before  
 4 the Board of Supervisors and meeting with County Counsel and a CEO representative.  
 5 (FAC ¶ 27–28.) As a result of his efforts, Ouimette was given a promotion to Senior  
 6 Network Systems Administrator, a position that paid less than and ranked below both  
 7 of the other positions for which Ouimette had applied. (FAC ¶ 29.)

8 Ouimette also alleges that he was entitled to various employment benefits  
 9 during the period from 2006 to 2011 that the County did not provide. (FAC 5–8.)  
 10 Ouimette specifically contends that while he worked as a Digital Systems Technician  
 11 from 2002 until 2011, he was represented by Bargaining Unit 411, whose fringe  
 12 benefits fell under the Coalition of County Unions. (FAC ¶ 35.) Employees  
 13 represented by Bargaining Unit 411 had access to the Choices Flexible Benefits Plan,  
 14 a cafeteria benefits plan providing employees and their eligible dependents access to  
 15 certain medical benefits. (FAC ¶ 36.) According to Ouimette, Choices beneficiaries  
 16 have 90 days from the first day of active duty to make certain changes to their  
 17 benefits, one change being a waiver of medical insurance coverage service-member  
 18 beneficiaries typically opt for when they will be covered under military medical  
 19 insurance. (FAC ¶ 38.)

20 Ouimette alleges that when he went on active military duty in 2006, the  
 21 County's Internal Services Department incorrectly informed him that he was only  
 22 entitled to benefits for the first 30 days of active duty, and had he been properly  
 23 informed of his benefits he would have waived medical coverage. (FAC ¶¶ 39, 41.)  
 24 Such a waiver could have resulted to Ouimette in a \$244 cash stipend per month in  
 25 lieu of the benefit contribution deduction from his salary. (FAC ¶ 41.)

26 In addition to his cafeteria benefits, Ouimette contends he was denied vacation  
 27 and holiday accrual and pension contributions to which he was entitled under the  
 28 fringe-benefits Memorandum of Understanding with SEIU Local 721. (FAC 7–8.)

1 As a result of these allegations, Ouimette filed a *pro se* Petition for Writ of  
2 Alternative Mandate in this Court on July 20, 2012. (ECF No. 1.) Following the  
3 Court’s dismissal of his Petition, Ouimette retained an attorney and filed a First  
4 Amended Complaint (“FAC”) on October 12, 2012. (ECF No. 26.) The FAC alleges  
5 two claims: (1) Discrimination under the Uniformed Services Employment and  
6 Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301–4335; and  
7 (2) Discrimination under California’s Military and Veterans Code sections 394 and  
8 395. The County now moves to dismiss Ouimette’s first claim and simultaneously  
9 moves to strike various portions of Ouimette’s Petition for Writ of Alternative  
10 Mandate.

### III. LEGAL STANDARD

Dismissal under Rule 12(b)(6) can be based on “the lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement—to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While specific facts are not necessary so long as the complaint gives the defendant fair notice of the claim and the grounds upon which the claim rests, a complaint must nevertheless “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Iqbal's plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully," but does not go so far as to impose a "probability requirement." *Id.* Rule 8 demands more than a complaint that is merely consistent with a defendant's liability—labels and conclusions, or formulaic recitals of the

elements of a cause of action do not suffice. *Id.* Instead, the complaint must allege sufficient underlying facts to provide fair notice and enable the defendant to defend itself effectively. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The determination whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 566 U.S. at 679.

When considering a Rule 12(b)(6) motion, a court is generally limited to the pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . as true and . . . in the light most favorable to [the plaintiff].” *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). Conclusory allegations, unwarranted deductions of fact, and unreasonable inferences need not be blindly accepted as true by the court. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Yet, a complaint should be dismissed only if “it appears beyond doubt that the plaintiff can prove no set of facts” supporting plaintiff’s claim for relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).

As a general rule, leave to amend a complaint that has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when “the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); see *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

#### IV. DISCUSSION

The Court considers the County of Los Angeles’s motion to dismiss and motion to strike in turn.

##### A. Motion to Dismiss

The County of Los Angeles only moves to dismiss Ouimette’s first claim for “Discrimination under 38 U.S.C. § 4301 et seq.” Despite styling his claim as one for discrimination, though, Ouimette cites 38 U.S.C. §§ 4311, 4312, and 4316(b)(1) in the

1 body the claim—only one of which (§ 4311) is a claim for discrimination. Further,  
 2 the parties rely on §§ 4311, 4312, and 4313 in their papers. Given the parties' failure  
 3 to distinguish between these claims in their pleadings and papers, the Court finds that  
 4 clarity demands a brief overview of USERRA's discrimination and reemployment  
 5 provisions contained in §§ 4311, 4312, and 4313.<sup>2</sup> The Court will then address the  
 6 specific arguments raised in the County's motion to dismiss.

7 *1. USERRA Overview*

8 The Uniformed Services Employment and Reemployment Rights Act, 38  
 9 U.S.C. §§ 4301–4335, is designed to, among other things, encourage noncareer  
 10 service in the uniformed services by “prohibit[ing] discrimination against persons  
 11 because of their service in the uniformed services.” *Id.* § 4301(a). Ouimette contends  
 12 the County of Los Angeles violated USERRA §§ 4311 and 4312 when it re-hired him  
 13 following his military service but failed to promote him commensurate with the  
 14 experience and qualifications he would have held had he remained with the County  
 15 during his periods of service. He further avers that the County discriminated against  
 16 him in violation of § 4311 by denying him certain employment benefits.

17 As applicable here, USERRA's anti-discrimination provision provides that a  
 18 uniformed service member<sup>3</sup> “shall not be denied initial employment, reemployment,  
 19 retention in employment, promotion, or any other benefit of employment on the basis  
 20 of” that member's service. 38 U.S.C. § 4311(a). An employer will be held liable for  
 21 discriminatory denial of employment, reemployment, promotion, or denial of benefits  
 22 to a service-member employee in violation of § 4311(a) where that service-member

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24           <sup>2</sup> Because the parties do not address § 4316 in their papers, the Court will refrain from discussion on  
 25 that section at this juncture.

26           <sup>3</sup> “The term ‘uniformed services’ means the Armed Forces, the Army National Guard and the Air  
 27 National Guard when engaged in active duty for training, inactive duty training, or full-time National  
 28 Guard duty, the commissioned corps of the Public Health Service, and any other category of persons  
 designated by the President in time of war or national emergency.” 38 U.S.C. § 4303(16).

1 employee's service was "a motivating factor in the employer's action, unless the  
 2 employer can prove that the action would have been taken in the absence of such"  
 3 service. § 4311(c)(1); *see also Townsend v. Univ. of Alaska*, 543 F.3d 478 (9th Cir.  
 4 2008).

5 In addition to its anti-discrimination protections, USERRA creates an  
 6 entitlement to prompt reemployment upon return from military service. Section 4312  
 7 provides that "any person whose absence from a position of employment is  
 8 necessitated by reason of service in the uniformed services is entitled to the  
 9 reemployment rights and benefits" of USERRA, subject to certain notice provisions  
 10 not contested here. Under § 4312, the employer must promptly reemploy a person  
 11 returning from a period of service, where "[p]rompt employment" means as soon as  
 12 practicable under the circumstances of the case." *Rogers v. City of San Antonio*, 392  
 13 F.3d 758, 762 (5th Cir. 2004) (citing § 4312(f)(4)).

14 Where, as here, the service member's service period extends past 90 days, the  
 15 service member shall be promptly reemployed "in the position of employment in  
 16 which the person would have been employed if the continuous employment of such  
 17 person with the employer had not been interrupted by such service, or a position of  
 18 like seniority, status and pay, the duties of which the person is qualified to perform."  
 19 § 4313(a)(2)(A). Under this provision, a returning service member "does not step  
 20 back on the seniority escalator at the point he stepped off. He steps back on at the  
 21 precise point he would have occupied had he kept his position continuously during"  
 22 his service. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284–85  
 23 (1946). This so-called "escalator position" is reflected in § 4313, which "requires that  
 24 the service member be reemployed in the escalator job position comparable to the  
 25 position he would have held had he remained continuously in his civilian  
 26 employment." *Rogers*, 392 F.3d at 763 (citing 38 U.S.C. § 4313); *see also* 20 C.F.R.  
 27 § 1002.191 (the escalator position is the job position the employee "would have  
 28 attained with reasonable certainty if not for the absence due to uniformed service" and

1 is based on the principal “that, if not for the period of uniformed service, the employee  
 2 could have been promoted (or, alternatively, demoted, transferred, or laid off) due to  
 3 intervening events”). The proper escalator reemployment position “includes the  
 4 seniority, status, and rate of pay that an employee would ordinarily have attained in  
 5 that position given his or her job history, including prospects for future earnings and  
 6 advancement,” had the service-member employee continued to work during the  
 7 military leave. 20 C.F.R. § 1002.193(a). If the service member fails to qualify for  
 8 either the escalator position or a comparable position in spite of the employer’s  
 9 reasonable efforts by the employer to qualify the employee for such positions, then the  
 10 employee is entitled to reemployment in the position most nearly approximating the  
 11 escalator position. 38 U.S.C. § 4313(a)(2)(A)–(B).

12 Finally, it is worth briefly noting the distinctions between a § 4311  
 13 discrimination claim and a § 4312 reemployment claim. Most critically, § 4312’s  
 14 reemployment provisions serve “only to guarantee service persons’ reemployment  
 15 without question as to the employer’s intent.” *Jordan v. Air Prods. & Chems., Inc.*,  
 16 225 F. Supp. 2d 1206, 1208 (C.D. Cal. 2002). Section 4312, therefore, “places service  
 17 people and employers on notice that, upon returning from service, veterans are entitled  
 18 to their previous positions of employment”; following reemployment under § 4312,  
 19 the service person is then protected by § 4311’s antidiscrimination provisions. *Jordan*  
 20 *v. Air Prods. & Chems., Inc.*, 225 F. Supp. 2d 1206, 1208 (C.D. Cal. 2002).  
 21 Accordingly, “[a]n employee proceeding under § 4311 has the burden of proving that  
 22 the employer discriminated against him or her based on a status or activity protected  
 23 by USERRA. Section 4312 imposes no such burden.” *Francis v. Booz, Allen &*  
 24 *Hamilton, Inc.*, 452 F.3d 299, 303 (4th Cir. 2006) (citations omitted) (citing 20 C.F.R.  
 25 §§ 1002.22, 1002.33).

26 Against this statutory background, the Court proceeds to consider the County’s  
 27 individual arguments in support of its motion to dismiss.

28 / / /

1       2. *Military service as a motivating factor in Ouimette's denial of benefits*

2       The County contends first that Ouimette has insufficiently alleged that the  
 3 County's denial of Ouimette's benefits was motivated by his military service.  
 4 According to the County, Ouimette has made only the conclusory allegation that  
 5 "Plaintiff's protected status as a USMC Reservist was a substantial motivating factor  
 6 in Defendant's denial of Plaintiff's employment benefits without good cause,  
 7 including promotional opportunities, holiday and vacation time accrual, cafeteria  
 8 benefits, and pension contributions." (FAC ¶ 60.)

9       The County's position demands too much of Ouimette at the pleading stage. To  
 10 be considered a motivating factor, a service member's military status need only be one  
 11 of many factors the employer considers in reaching an employment decision. *See*  
 12 *Staub v. Proctor Hosp.*, 131 S. Ct. 1186, 1191–92 (2011). Evidence of discriminatory  
 13 motivation "may be reasonably inferred from a variety of factors, including proximity  
 14 in time between the employee's military activity and the adverse employment action."  
 15 *Leisek v. Brightwood Corp.*, 278 F.3d 895, 900 (9th Cir. 2002). Moreover, to survive  
 16 a motion to dismiss, Ouimette is tasked only with alleging a claim plausible enough  
 17 for the Court "to draw the reasonable inference that the defendant is liable for the  
 18 misconduct alleged." *Iqbal*, 556 U.S. at 678.

19       Ouimette has alleged that he was denied accrual of vacation and holiday time,  
 20 pension contributions, and cafeteria benefits while he was on active military duty.  
 21 (FAC ¶¶ 39, 41, 46, 49, 50, 53–55, 57.) He further alleges that he was denied proper  
 22 reinstatement and promotional opportunities upon his return to work because he was  
 23 denied the opportunity to sit for promotional examinations that were offered while he  
 24 was on active military duty. (FAC ¶¶ 20, 25.) Each of these alleged denials of  
 25 benefits occurred either during Ouimette's deployment or immediately upon his  
 26 return. Given the close proximity in time between Ouimette's military service and the  
 27 County's alleged adverse employment actions, the Court may reasonably infer that  
 28 Ouimette's military deployment was a motivating factor in the County's decision to

1 deprive Ouimette of certain employment benefits. The Court therefore **DENIES** the  
 2 County's motion insofar as it contends that Ouimette failed to allege that his military  
 3 service was a motivating factor in his benefit denials.

4       3.     *Materiality of denied cafeteria benefits*

5       The County argues next that Ouimette's claim for denial of cafeteria benefits  
 6 must fail because Ouimette "has not, and cannot show, that a \$244 cash stipend under  
 7 the 'denial of cafeteria benefits' is materially adverse to [his] employment." (Mot. 7.)  
 8 It appears that the County misunderstood Ouimette's allegation regarding his cafeteria  
 9 benefits. While not exactly a model of clarity on this point, Ouimette's FAC alleges  
 10 that had he been properly informed about his benefits, "he would have waived medical  
 11 coverage because he was covered under military medical insurance while on active  
 12 military duty," which "would have resulted in a \$244.00 cash stipend in lieu of the  
 13 benefit contribution deduction from his salary *each month* while he was on active  
 14 duty." (FAC ¶ 46 (emphasis added).) He also alleges that he took military leave from  
 15 January 9, 2006, through September 30, 2007 (approximately 20 months) and then  
 16 again from November 22, 2007, until July 1, 2011 (approximately 43 months). (FAC  
 17 ¶ 14.) Ouimette therefore does not seek a single payment of \$244, but rather \$244 for  
 18 each of the nearly 63 months he was on leave. This amounts to more than \$15,000—a  
 19 figure the Court considers neither "trivial" nor "a minor annoyance." (Mot. 7.) The  
 20 County's motion is therefore **DENIED** on this point.

21       4.     *Ouimette's elevator-position qualifications*

22       The County further contends that Ouimette's first claim must be denied insofar  
 23 as it relies on the failure-to-promote theory because Ouimette failed to allege that he  
 24 was qualified for the promotional opportunities he claims he was denied. But the  
 25 County fails to cite any controlling precedent supporting its position that Ouimette is  
 26 tasked with pleading his qualifications in order to survive a motion to dismiss, and  
 27 both cases the County cites—*Williams v. Dep't of the Navy*, 94 M.S.P.R. 206 (2003),  
 28       //

1 and *Little v. Pa. R. Co.*, 95 F. Supp. 631 (D.C. Md. 1951)—concern matters of proof,  
2 not pleading.

3 More importantly, 38 U.S.C. § 4311(c)(1) provides that an aggrieved employee  
4 has an actionable claim where his employer takes adverse employment action  
5 motivated by the employee’s military service, “*unless the employer can prove that the*  
6 *action would have been taken in the absence of such*” service. § 4311(c)(1) (emphasis  
7 added). This statutory provision suggests that the County, as the employer, bears the  
8 burden to establish that Ouimette would not have been promoted regardless of his  
9 military service because he lacked the requisite qualifications. And while  
10 § 4313(a)(2)(A) provides that a service member must be promptly reemployed in the  
11 escalator position “the duties of which the person is *qualified to perform*,” § 4313(a) is  
12 a mandatory provision: “a person entitled to reemployment under section 4312 . . .  
13 *shall be promptly reemployed in a position*” described in subsections (1) through (4)  
14 (emphasis added). This—combined with the Court’s duty to broadly construe  
15 USERRA in favor of its military beneficiaries in light of USERRA’s purpose to  
16 protect service members’ rights, *Francis*, 452 F.3d at 303—similarly suggests that an  
17 employee’s qualifications for the proper escalator position are more appropriately  
18 viewed as a rebuttable presumption the employer is tasked with rebutting, not an  
19 element the employee is required to plead. Accordingly, the Court rejects the  
20 County’s insistence that Ouimette bore the burden under § 4311 or § 4313 of alleging  
21 his qualifications at the pleading stage.

## 22        5.     *Ouimette’s reemployment and promotion*

23 To the extent Ouimette’s first claim relies on his §§ 4312 and 4313  
24 reemployment rights, the County asserts that it did not violate USERRA because it  
25 reemployed and then promoted Ouimette. Ouimette responds that while he was  
26 eventually “promoted” retroactively to Senior Network Systems Administrator, it is  
27 reasonably certain that, had he continued working instead of taking leave, he would  
28 have accrued enough seniority and experience to attain the promotional opportunities

1 he was denied. (Opp'n 8.) In addition, Ouimette contends the Senior Network  
 2 Systems Administrator position “is ranked below both of the other positions for which  
 3 Plaintiff applied, and yields a much lower salary.” (FAC ¶ 29.)

4 Ouimette’s reemployment allegations easily suffice to survive a motion to  
 5 dismiss. Ouimette is correct that while the County did rehire Ouimette, the County  
 6 does not comply with USERRA simply by reemploying Ouimette to any position;  
 7 instead, Ouimette was entitled to reemployment at his escalator position. And while  
 8 the County eventually promoted him to Senior Network Systems Administrator,  
 9 Ouimette contends this position is lower in rank and pay than his previous position.  
 10 Taken as true, these allegations state a plausible claim that Ouimette’s reemployment  
 11 position after the promotion did not properly take into account the “seniority, status,  
 12 and rate of pay” he would ordinarily have attained had he worked during his period of  
 13 leave. 20 C.F.R. § 1002.193(a).

14       6. *Ouimette’s military service is exempt from the 5-year limitation*

15 Next, the County contends that Ouimette is not entitled to reemployment rights  
 16 because his cumulative absence exceeded 5 years. (Mot. 9 (citing 38 U.S.C.  
 17 § 4312(a)(1)–(3)).) But while the County correctly characterizes the general rule  
 18 under § 4312(a)(2) that employees who take leave for military service in excess of 5  
 19 years are not entitled to reemployment benefits under USERRA, the County  
 20 conveniently ignores the exceptions to that rule set forth under 38 U.S.C. § 4312(c).

21 Ouimette specifically invokes § 4312(c)(4)(A) and (B), which exempt from the  
 22 5-year maximum (A) military service to complete training requirements necessary for  
 23 professional development and (B) military service ordered as a result of a war or  
 24 national emergency declared by the President or Congress. Ouimette contends he was  
 25 ordered to military service in 2007 “in support of the national emergency declared  
 26 under Presidential Proclamation Proclamation 7463 of 14 September 2001 and as  
 27 prescribed in Executive Order 13223.” (Opp'n 9.) The County did not oppose this  
 28 assertion. The Court therefore **DENIES** the County’s motion insofar as the County

1 contends Ouimette's service in excess of 5 years exempts him from USERRA's  
2 provisions.

3       7.     *Denial of benefits by Ouimette's "union"*

4             Finally, the County argues that Ouimette cannot sue the County for violating  
5 USERRA based on its alleged denial of benefits because those benefits were offered  
6 by his unions (Bargaining Unit 411 and SEIU Local 721), not the County.  
7 Specifically, the County maintains that the benefits Ouimette claims the County  
8 denied him "are not benefits offered or denied by the County, thus the County cannot  
9 be held liable for these benefits. Rather, these benefits arise from Plaintiff paying  
10 Union dues to his Unions as separate legal entities in exchange for Plaintiff obtaining  
11 medical, pension and Deferred Compensation through his Union." (Mot. 10.)  
12 Ouimette responds that while his collective bargaining units may be separate legal  
13 entities from the County of Los Angeles, the employment benefits the entities provide  
14 Ouimette "are solely and inextricably based on his employment with" the County, as  
15 the County "agreed during contract negotiations with union representatives that  
16 Plaintiff and its other employees would receive these benefits of employment."  
17 (Opp'n 9.)

18             But the extent of the briefing on this issued ends there. Neither party has cited  
19 any legal authority whatsoever in support of either proposition. As a result, they  
20 essentially argue a point of fact without any legal support. Therefore, in light of the  
21 County's anemic development of its argument on this point, the Court **DENIES** the  
22 County's motion to the extent it contends it cannot be held liable for its alleged denial  
23 of Ouimette's benefits.

24             The Court therefore rejects all of the County's arguments advanced in support  
25 of its motion to dismiss. Accordingly, the County's motion is **DENIED** in its entirety.

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1      **B. Motion to Strike**

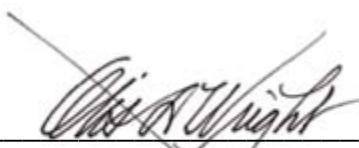
2      The County of Los Angeles has also moved to strike portions of Ouimette's  
3      pleadings. But while the docket text calls this motion (ECF No. 28) a "NOTICE OF  
4      MOTION AND MOTION to Strike First Amended Complaint" set for hearing on  
5      December 17, 2012, the actual motion the County filed is a carbon copy of its  
6      August 13 motion to strike Ouimette's original Petition for Writ of Alternative  
7      Mandate (ECF No. 10). And while this Court did receive a courtesy copy of what the  
8      County apparently *intended* to e-file, the County's courtesy copy is not a properly  
9      filed motion and failed to give Ouimette proper notice of what he was supposed to  
10     oppose (a point well reflected in Ouimette's opposition to the County's redundant  
11     motion: "Plaintiff cannot articulately oppose this motion because it is moot,  
12     unintelligible and irrelevant, given that there is no such operative pleading before this  
13     Court, having been replaced by Plaintiff's First Amended Complaint . . . filed on  
14     October 12, 2012." (Opp'n 1.)) Because the County's motion therefore moves to  
15     strike portions of an inoperative pleading, the County's motion to strike is **DENIED**  
16     **AS MOOT.**

17                        **V. CONCLUSION**

18      For the reasons discussed above, the Court **DENIES** both the County's motion  
19      to dismiss (ECF No. 27) and motion to strike (ECF No. 28).

20                        **IT IS SO ORDERED.**

21      December 12, 2012

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23                        

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**OTIS D. WRIGHT, II**  
24                        **UNITED STATES DISTRICT JUDGE**